

REMARKS/ARGUMENTS

The Examiner stated that the Declaration filed on May 12, 2006 under 37 CFR 1.131 was ineffective to demonstrate diligence because dates had been redacted from the affidavit. Also, Claims 1, 6-9, 19, 24-27, 37, and 42-45 are pending in the application but have been rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Eylon et al. (U.S. Patent No. 6,757,894) in view of Franco et al., (U.S. Patent No. 6,687,745). The Examiner's rejections are respectfully traversed for the following reasons:

Eylon et al is Not Prior Art under 35 U.S.C. § 102(e)

The Examiner relies upon Eylon et al., either alone or in combination with another reference, to reject claims 1, 6-9, 19, 24-27, 37, and 42-45. The applicants are entitled to a patent under § 102(e)(1) unless the invention was described in "an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent[.]" Here, the applicants' effective date is November 6, 2000, and Eylon's application was published July 4, 2002. Thus, Eylon et al does not qualify as prior art under § 102(e)(1).

Similarly, the applicants are entitled to a patent under § 102(e)(2) unless the invention was described in "a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language[.]" Here, the applicants' effective date is November 6, 2000, and Eylon's application was filed December 28, 2000, and there is no indication that Eylon filed an international application. Thus, Eylon et al does not qualify as prior art under § 102(e)(2).

All of the Examiner's rejections rely upon Eylon et al, either alone or in combination with another reference. Since Eylon et al does not qualify as prior art under 35 U.S.C. § 102(e), the applicants respectfully submit that Claims 1, 6-9, 19, 24-27, 37, and 42-45 are allowable over the prior art of record. The applicants do not provide any opinion regarding the teachings of Eylon et al. because no such opinion is deemed necessary.

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the prior art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 838-4305.

Respectfully submitted,
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